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September 25, 2014

VIA FEDERAL EXPRESS DELIVERY

FOIA REQUEST

SECNAV/CNO FOIA Office
Chief of Naval Operations (DNS-36)
2000 Navy Pentagon
Washington, DC 20350-2000

Re: FOIA Request Regarding Military Sexual-Assault Reporting and Treatment

Dear FOIA Officer:

We write on behalf of our client, Human Rights Watch (“HRW”). HRW is an independent nonprofit organization dedicated to protecting the human rights of people around the world. Human Rights Watch is conducting research examining the treatment of victims of sexual harassment or sexual assault in the military and intends to publish a report on its findings.

This letter constitutes a request for information (“FOIA Request”) from the Secretary of the Navy pursuant to Secretary of the Navy Instruction 5720.42F, Department of the Navy Freedom of Information Act Program (SECNAVINST 5720.42F) and the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

A. Definitions

For the purposes of this FOIA Request, the following terms or phrases have the following meanings:

1. “Administrative separation” or “administrative separation” means early termination of military service based upon conduct on the part of the respective servicemember.
2. “Article 138 Complaint” means a process by which persons can attempt to remedy a wrong committed against them by their commanding officer.

3. "Collateral Misconduct" means Victim misconduct that might be in time, place, or circumstances associated with the victim's sexual assault incident. Some reported sexual assaults involve circumstances where the victim may have engaged in some form of misconduct (e.g. underage drinking or other alcohol related offenses, adultery, fraternization, or other violations of certain regulations or orders).
4. "Command Climate Report or Survey" means tools used by the DoD and the services to assess institutional and command effectiveness in preventing sexual assault and responding appropriately to sexual assault reports, including surveys conducted when a new commander assumes responsibility for an organization and annually thereafter and surveys conducted by the Defense Equal Opportunity Management Institute, the Defense Equal Opportunity Survey, Unit Effectiveness Surveys, 360-degree and other leadership assessments, local personnel surveys, and other feedback designed to obtain information about the climate in command relating to SAPR.
5. "Disciplinary action" includes, but is not limited to, Letters of Reprimand, Letters of Counseling, nonjudicial punishments under Article 15 of the Uniform Code of Military Justice, demotions in rank, deduction of pay, unfavorable assignments, and other forms of administrative action that impact a personnel record. It also includes less formal actions such as confinement to barracks or extra physical training.
6. "Documents" means any written, typed, pictorial, photographic, graphic, recorded, digital and/or electronically stored, or printed matter in its entirety, including any addenda, notes, supplements, amendments, drafts, investigative reports, interagency discussion, internal rules or regulations, analyses or observations, photographs, illustrations, comments, conclusions, revisions, exhibits, and appendices thereto, together with any copies bearing notations, memoranda, or other written information. The term "documents" also includes, but is not limited to, written policies, regulations, instructions, and guidance in which applicable procedures are prescribed.
7. "DoD" means the United States Department of Defense.

8. “DS Aid” means the Defense Sexual Assault Incident Database.
9. “HIV” means Human Immunodeficiency Virus.
10. “IG” means Inspector General.
11. “MST” or “Military Sexual Trauma” means psychological trauma that resulted from Sexual Assault, battery of a sexual nature, or Sexual Harassment that occurred while the victim was serving on active duty or active duty for training. MST-related mental health conditions might include PTSD or depression.
12. “Navy” means the United States Department of the Navy.
13. “PTSD” means post-traumatic stress disorder.
14. “Reprisal” means any unfavorable personnel action taken or threatened, or a favorable personnel action withheld or threatened to be withheld, respecting the personnel status in response to the servicemembers’ reporting of sexual assault or sexual harassment. This also includes improper referrals of servicemembers for mental health evaluations, non-judicial disciplinary action and courts martial, letters of counseling or reprimand, and other forms of punishment.
15. “SAPR” means Sexual Assault Prevention and Response.
16. “SAPRO” means the Sexual Assault Prevention and Response Office.
17. “SARC” means Sexual Assault Response Coordinators or other designated victim advocate or support person.
18. “Sexual Assault” means rape or any other unwanted sexual contact, including, without limitation, completed or attempted sexual intercourse, oral or anal penetration, penetration by an object, and the unwanted touching of genitalia and other sexually related areas of the body.
19. “Sexual Harassment” means unwelcome sexual advances, requests for sexual favors or quid pro quo, and other verbal or physical conduct of a sexual nature, occurring in the workplace or by a coworker or supervisor of the victim.

20. "SHARP" means Sexual Harassment / Assault Response and Prevention.
21. "Veterans" or "veterans" are persons who have served (even for a short time), but are not currently serving, on active duty in the U.S. Army, Navy, Air Force, Marine Corps, the Coast Guard, or National Guard or Reserves.
22. "Victim" or "victim" means an individual who asserts direct physical, emotional, or pecuniary harm as a result of the commission of a Sexual Assault or Sexual Harassment.
23. "VLC" means Victim Legal Counsel.
24. "Vet Centers" are locations that provide readjustment counseling and outreach services free of charge to all veterans who served in any combat zone.

B. Instructions

HRW wishes to obtain the desired information and statistical data with as little inconvenience as possible to the Navy. To the extent that identical information is contained in more than one form, report or other document, the information may be produced in the form most convenient to the Navy. For example, if a regulation is initially prepared as a memorandum but is later disseminated verbatim in its final form, it is not necessary to produce the memorandum. HRW reserves the right to seek additional information once it reviews the production.

1. To the extent that statistical documents are provided in electronic format, the Navy shall provide them in tab-delimited, Microsoft Excel, SPSS, or Microsoft Access files rather than in a proprietary form.
2. Electronic documents shall be produced on a USB drive and/or a CD. Upon request, HRW will produce a USB drive or CD to the Navy to facilitate the production of materials.
3. We request disclosure of all portions of the records excepting names or other identifying information insofar as necessary to

protect against an unwarranted invasion of personal privacy in accordance with federal laws.

C. Requests

Unless otherwise specified, HRW requests that the Navy provide all documents, redacted as required by law, related to the following information for each of the calendar years of 2008, 2009, 2010, 2011, 2012, 2013 and 2014 (to date), per year if available:

1. Number of servicemembers who reported a Sexual Assault and/or Sexual Harassment who are still in the Navy.
2. Number of servicemembers who reported Sexual Assault and/or Sexual Harassment before becoming subject to an administrative separation within one (1) year of such report and characterization of the administrative separations.
3. Number of servicemembers who reported Sexual Assault and/or Sexual Harassment before becoming subject to an involuntary or administrative discharge or termination within two (2) years of such report and characterization of the administrative separations.
4. Number of servicemembers reporting Sexual Assault who voluntarily left the Navy within 6 months of such report and characterization of the administrative separations.
5. Number of servicemembers reporting Sexual Assault who voluntarily left the Navy within one (1) year of such report and characterization of the administrative separations.
6. Number of servicemembers reporting Sexual Assault who voluntarily left the Navy within two (2) years of such report and characterization of the administrative separations.
7. Percentage of eligible enlisted servicemembers who renew their contracts by gender.
8. Percentage of officers who remain on active duty after their first period of obligation by gender.
9. Number of servicemembers who reported Sexual Assault or Sexual Harassment and were subject to charges for Collateral

Misconduct arising from the same incident, in total and broken down by the following categories:

- a. Number of charges related to alcohol or drug use;
 - b. Number of charges of adultery;
 - c. Number of charges of fraternization;
 - d. Number of charges related to other violations of the Uniform Code of Military Justice;
 - e. Number of charges that resulted in disciplinary action;
 - f. Number of charges that proceeded to courts martial.
10. Number and type of administrative separations by gender.
 11. Characterization of administrative separations (honorable, General, Under Other than Honorable, Dishonorable or Bad Conduct) by gender.
 12. Number of administrative separations based on a mental condition broken down by gender.
 13. Protocols for the discharge or administrative separation process, including what information must be presented to the person being discharged, and any required forms for completion by the person discharged.
 14. Number and description of Navy reforms implemented and planned related to addressing Sexual Assault and Sexual Harassment cases from the beginning of fiscal year 2013 to present.
 15. Description of programs implemented to reduce the stigma and overcome barriers associated with reporting sexual assault from the beginning of fiscal year 2013 to present.
 16. Number and description of Navy efforts to implement and monitor methods to improve MST victim treatment by their peers, co-workers and chain of command.

17. Training materials (including videos or multimedia material) on Sexual Assault and Sexual Harassment for enlisted members and officers, including training materials focused on male victimization.
18. Outreach materials directed toward male survivors of Military Sexual Trauma.
19. Training materials for SARCs, SAPR victim advocates, VLCs, and other SHARP staff, including training materials focused on male victimization.
20. Documents detailing whether SARC, SAPR victim advocate, VLCs and other SHARP staff duties are full-time or collateral to other responsibilities. If the duties are collateral, documents explaining how the duties are integrated into performance evaluations and how conflicting obligations are prioritized.
21. Documents, including training and outreach materials, provided to servicemembers about how and where to file complaints if they have experienced reprisals as a result of reporting Sexual Assault or Sexual Harassment.
22. Documents analyzing, describing or pertaining to Article 138 Complaints against commanders for reprisals or mishandling of Sexual Assault or Sexual Harassment cases including documents indicating whether Article 138 Complaints on these grounds have been substantiated and what corrective action was taken
23. Types of disciplinary action that can be or have been used in connection with reprisals or retaliation for reporting Sexual Assault or Sexual Harassment for enlisted servicemembers and officers.
24. Number of times nonjudicial disciplinary action (such as nonjudicial punishments under article 15 of the Uniform Code of Military Justice, adverse administrative action, or discharge) has been taken against an enlisted person or officer for reprisals or retaliation against person who reported a Sexual Assault and type of disciplinary action taken.
25. Records of corrective action taken based on Navy Inspector General investigation findings of reprisal action taken against

Navy members for making protected communications. In particular, all reports made to the Department of Defense pursuant to DOD Directive Number 7050.06 Sections 5.3.3 and 5.4.2 (July 23, 2007)

26. Number of cases in which a servicemember has been court-martialed for retaliation or reprisals against a servicemember who has reported a sexual assault.
27. Any victim surveys or questionnaires pertaining to handling of individual Sexual Assault or Sexual Harassment cases, including the form of the surveys or questionnaires and information about responses received and tabulated.
28. Results from Command Climate Reports or Surveys or other assessment mechanisms, including 360 degree reviews, allowing Sexual Assault and Sexual Harassment survivors and Marines, generally, to provide feedback on the climate within the Marine Corps with respect to SAPR.
29. Narrative feedback provided by servicemembers in response to opportunities or solicitations to provide feedback on the military's sexual assault response in other forms, such as on web pages.
30. Any audits or reports generated from the DSAID.
31. Policies regarding access to voluntary leave for victims of Sexual Assault.
32. Provisions for protecting confidentiality in relation to mental health records, including rules governing commanders' access to subordinates' records.
33. Policies, protocols or other documents regarding how commanders should address servicemembers manifesting symptoms of PTSD.
34. Training and guidance for commanders regarding PTSD specifically, and mental health concerns broadly.
35. Policies and provisions relating to confidentiality of health records for servicemembers who have HIV, and any policies or provisions

to enable servicemembers who have HIV to be absent to attend medical appointments without disclosure of their HIV status.

36. Policies regarding availability of specialized mental health care on bases or in overseas operations for MST survivors.
37. Policies regarding access to civilian mental health care for MST survivors stationed in the United States.
38. Outreach programs or initiatives to make active servicemembers in the Navy aware of their eligibility for counseling at Vet Centers or community based health care services such as rape crisis centers.
39. Mental health screening and evaluation for new recruits, including any screening measures to identify personality disorder.
40. Mental health screening requirements for military intelligence personnel.
41. Internal memos and evaluations regarding the Navy's handling of Sexual Assault cases and care of victims.
42. The methods by which Command Climate Reports or Surveys or other climate assessments are prepared, including (a) methods used to determine which comments from anonymous surveys are included in the final surveys/reports, (b) methods by which investigators review or investigate allegations made in comments contained in such surveys/reports, (c) any opportunities the commander has to review or rebut the comments contained in such surveys/reports, (d) any questions pertaining to SAPR, and (e) documents describing how survey outcomes are used.
43. Personnel policies or any guidelines that limit the transfer of defense counsel, prosecutors, and VLCs appointed to open criminal cases.
44. Mechanisms, apart from the DoD or Navy IG's office, allowing victims of Sexual Assault or Sexual Harassment to raise concerns about reprisals or retaliation.

45. Instructions or guidelines for peers, coworkers, or chain of command pertaining to treatment of victims of Sexual Assault or Sexual Harassment.
46. Documents, including draft regulatory proposals, prepared by the Navy in response to the prohibition of retaliation in the National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672, Secs. 1709, 1714.
47. Number of servicemembers who have requested review of a recommendation for administrative separation from the Navy based on the belief that the recommendation was initiated as a reprisal for making an unrestricted report of a sexual assault pursuant to the National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632, Sec. 578 and Department of Defense Instruction Number 1332.14 (January 27, 2014).
48. The outcome of any reviews of administrative separations or adverse administrative actions in which the servicemember has requested review based on the belief that the recommendation for discharge or adverse action was a reprisal for reporting a Sexual Assault.

Please contact me if you have questions regarding specific Requests or if you expect an unusual delay in producing the requested documents and/or information. If any documents in your possession, custody, and/or control are not produced for any reason, please identify the documents withheld from production and state the reason the documents are being withheld. Should you determine that any portion of a document or the information requested is exempt from production, please supply all portions of the document or the information that is not exempt and/or privileged from production.

D. Fee Waiver Request

HRW respectfully requests that the documents related to the above requests be furnished without charge.

1. Release of the Records is in the Public Interest

HRW qualifies for a fee waiver because this FOIA Request is in the public interest pursuant to the federal FOIA statute, 5 U.S.C. § 552(4)(A)(iii). Fees related to a FOIA request are waived if a request is in the public interest and

benefits the general public. HRW's research and reporting contributes substantially to the public interest by increasing public understanding of a range of human rights issues. HRW further uses the results of its investigations to generate publicity and influence policy in a manner that improves human rights and thus benefits the general public.

In recent years, the widespread problem of rape in the U.S. military has drawn a great deal of attention from policymakers and the public. As a result, the military is considering reforms to ensure accountability for those responsible for sexual assault. Yet, policymakers and the media have so far paid scant attention to a critical related issue: retaliation against victims who speak out. Victims who report sexual assault risk being ostracized, leveled with collateral charges, or discharged with a status that renders them ineligible for essential veterans' benefits. Addressing retaliation and other factors that may discourage survivors from reporting an assault will be crucial to ensuring that the true scope of military sexual assault and resulting trauma is addressed.

The principal purpose of HRW's FOIA Request is thus to enable it to make an objective evaluation of the Navy's efforts to address sexual assault within the military, respond to retaliation against victims who report, and ensure victims have access to appropriate services. In particular, HRW aims to utilize these records to examine the need for additional improvements in the military's response to retaliation claims, improved confidentiality safeguards for those who report an assault, and restrictions on the use of collateral charges against servicemembers who report an assault. HRW will issue a report based on these findings and will publish it online on its website, potentially along with advocacy documents and a multimedia product. The report and related products will be widely disseminated and will inform the public about possible areas where further action needs to be taken to safeguard the rights of sexual assault victims in the military. This FOIA Request is in the public interest because it is likely to contribute significantly to public understanding of the action the Navy is taking to address the hardships and injustices that some sexual assault and sexual harassment survivors confront after reporting and that may dissuade other survivors from reporting. Any effort that might lead to increased reporting of crime is in the interest of public safety and therefore in the public interest. Further, efforts that may contribute to the safety of servicemembers are of particular interest to the US public as the crimes at issue are committed while the victims are serving their country.

2. HRW Qualifies as a Representative of the News Media

HRW also qualifies for a fee waiver under the federal FOIA statute, 5 U.S.C. § 552(4)(A)(ii) because of its status as a representative of the news media. HRW meets the statutory definition of a representative of the news media because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(II).

HRW meets this definition because it conducts its own investigations, gathers information, and turns this material into in depth reports and up-to-the-minute updates concerning human rights issues around the world, including inside the United States.¹ HRW’s findings are often discussed in newspapers and other news media in addition to in its own publications.² HRW further issues press releases³ and publishes op-eds⁴ on a weekly basis, drawing public attention to human rights issues inside the United States. The reports, articles, and public comments that HRW publishes on these matters are available on the HRW website,⁵ which had 10.2 million visitors in 2013. HRW also provides multimedia features presenting our findings on its YouTube channel,⁶ which had over 5 million views in 2013. In that year, HRW produced 62 such multimedia features, including one feature that was viewed more than 3 million times in February 2014 alone.⁷ HRW additionally disseminates information to its 2

¹ *U.S. Domestic Policy*, HUMAN RIGHTS WATCH, <http://www.hrw.org/en/united-states/us-program> (last visited Jul. 15, 2014).

² From January 1, 2011, to January 1, 2012, Human Rights Watch appeared in Agence France Press 1,800 times, Reuters News 681 times, Associated Press Newswires 565 times, All Africa 1,152 times, CNN Newswire 712 times, BBC News 410 times, *The Guardian* (UK) 310 times, and *The New York Times* 255 times. Additionally, Human Rights Watch often appears in major US papers such as *The Washington Post*, *The Wall Street Journal*, *USA Today*, *The Pittsburgh Post-Gazette*, *The Los Angeles Times*, *The Chicago Tribune*, *The Houston Chronicle*, and others. Internationally, Human Rights Watch has been cited by the *International Herald Tribune*, *Der Spiegel* (Germany), *The Toronto Star* (Canada), *The Jakarta Post* (Indonesia), *El Pais* (Spain), *Le Monde* (France), *The Sydney Morning Herald* (Australia), *The Times* (London), *Mail and Guardian* (South Africa), as well as hundreds of other print news sources around the world.

³ *U.S. Domestic Policy: News Releases*, HUMAN RIGHTS WATCH, <http://www.hrw.org/by-issue/news-filter/579> (last visited Jul. 15, 2014).

⁴ *U.S. Domestic Policy: Commentaries*, HUMAN RIGHTS WATCH, <http://www.hrw.org/by-issue/commentaries/579> (last visited Jul. 15, 2014).

⁵ HUMAN RIGHTS WATCH, <http://www.hrw.org> (last visited Mar. 10, 2014).

⁶ YOUTUBE: HUMAN RIGHTS WATCH, <https://www.youtube.com/user/HumanRightsWatch> (last visited Jul. 15, 2014).

⁷ *Russia: Gay Men Beaten on Camera*, HUMAN RIGHTS WATCH (Feb. 3, 2014), https://www.youtube.com/watch?v=zMTbFSJ_Tr4.

million followers in social media, including over 1.27 million Twitter followers⁸ and 1 million Facebook fans.⁹ HRW has published numerous analyses of data obtained from the US government under FOIA, including investigations of US Immigration and Customs Enforcement deportation and detention practices and investigations of police department practices.¹⁰

Once HRW compiles and analyzes the data it receives through this FOIA Request, it will publish a report on its findings and will also display its report on its website. This information would be of current interest to the public. HRW is organized and operated to make such information available to the public and is thus a representative of the news media.


3. *HRW Does Not Seek the Requested Information for Commercial Benefit*

Finally, HRW does not seek the requested information for commercial benefit. As previously noted, HRW is a nonprofit charity dedicated to accessing and disseminating information related to human rights to the public. HRW has been granted a fee waiver under the federal FOIA statute, 5 U.S.C. § 552(4)(A)(iii).

For the reasons stated above, any fee associated with the above request should be waived.

Very truly yours,

Bodman PLC



Maya Watson

⁸ TWITTER: HUMAN RIGHTS WATCH, <https://twitter.com/hrw> (last visited Jul. 15, 2014).

⁹ FACEBOOK: HUMAN RIGHTS WATCH, <https://www.facebook.com/HumanRightsWatch> (last visited Jul. 15, 2014).

¹⁰ *Forced Apart (By the Numbers)*, HUMAN RIGHTS WATCH (Apr. 15, 2009), <http://www.hrw.org/reports/2009/04/15/forced-apart-numbers-0>; *A Costly Move*, HUMAN RIGHTS WATCH (Jun. 14, 2011), <http://www.hrw.org/reports/2011/06/14/costly-move-0>; *Capitol Offense*, HUMAN RIGHTS WATCH (Jan. 24, 2013), <http://www.hrw.org/reports/2013/01/24/capitol-offense-0>.